IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY SEVENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 723 of 2005

Between:

1 S. Venkateswara Rao, S/o Paidayya,
2 S. Apparao, S/o Venkateswararao,
3 S. Srinivas, S/o Venkateswara Rao,
4 S. Ramesh, S/o Venkateswara Rao,
(All are Residents of Hanuman Colony, Palakol, West Godavri District).

..... PETITIONERS

AND

1 The Deputy Commissioner of Endowments, Kakinada, East Godavari District.
2 The Assistant Commissioner of Endowments, Eluru, West Godavari District.
3 The Executive Officer, Sri Sheera Ramalingeshwara Swamy Temple, Palakol, West Godavari District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate Writ, order or direction declaring the action of the Respondents in taking steps to evict the Petitioners from the land an extent of Ac. 8.86 cents (Ac 10.28 cents) situated in R.S.No. 106, 108/2, 45/4 of Palakol Rural, West Godavari District without determining whether the Petitioners are landless poor persons are not under rule 3 of the rules framed in G.O.Ms.No. 379 dt. 11-3-2003 as illegal, arbitrary and unconstitutional.

Counsel for the Petitioners:MR.K.CHIDAMBARAM
Counsel for the Respondents: GP FOR ENDOWMENTS

The Court at the stage of admission made the following ORDER:

The first petitioner was granted lease in respect of Ac.10.28 cents of agricultural land in survey Nos. 106, 108/2 and 45/4 of Palakol rural, belonging to Sri Ramalingeshwara Swamy Temple, Palakol, about ten years back. The Executive Officer of the temple, the third respondent, issued notice dated 13.12.2004 requiring him to deliver the vacant possession of the same. The petitioners challenge the same.

Learned counsel for the petitioners submits that though the land was initially leased to the first petitioner, as there is a division in the family, it is being cultivated by the first petitioner and his sons viz. petitioners 2 to 4. He contends that if the individual holdings of the petitioners are taken into account, the petitioners deserve to be treated as landless poor persons, as defined under the explanation to Section 82 of the A.P. Charitable & Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act'). He contends that the petitioners have submitted a representation to the second respondent in this regard and even while the same is pending, steps are being taken to evict them.

Learned standing counsel for the third respondent Temple and learned Government Pleader for Endowments, on the other hand, submit that for the purpose of determining the status of the lessees, the extent of original lease has to be taken into account and the subsequent developments in the family of lessee are of no consequence. It is also contended that by operation of Section 82 of the Act, the lease stood terminated and the petitioners had no right to continue over the land.

The uncertainty that prevailed as to the operation of Section 82 of the Act came to an end with the recent Judgment of the Supreme Court as well as the amendment caused to that provision. Now there does not exist any impediment for the operation of Section 82 of the Act. It provides for automatic cancellation of the lease in respect of the agricultural lands held by religious endowments and institutions. The only exception is in relation to the lands leased to the persons recognized as landless poor, as defined under the explanation to the said provision. On being declared as landless poor person, the lessee is entitled to purchase the land under his cultivation at three-fourth of the market rate, provided that the religious endowment and institution decides to sell the same.

In this case, it is not in dispute that the total extent of the land is Ac.10.28 cents and it was leased in favour of the first petitioner. A landless poor person is defined as the one who holds the extent not exceeding Ac.2.05 cents of wet land or Ac.5.00 of dry land, either as owner or lessee. A Full Bench of this Court held that the subsequent alterations in the structure of family of lessee are of no consequence in such determination. Therefore, the application filed by the petitioners before the second respondent seeking their recognition as landless poor persons, is virtually infructuous.

Even according to the petitioners, the maktha for the land in question was fixed at 205 bags. It is not known whether any enhancement was made thereafter. Once it is found that the petitioners have no right to stay over the land, no exception can be taken to the notice issued by the third respondent requiring them to vacate the land.

Learned counsel for the petitioners submits that the petitioners have raised a crop over the land and that they would be put to hardship, if they are not permitted to harvest it. If that be so, the petitioners can be permitted to harvest the crop, after paying the maktha for the same.

Hence, the writ petition is disposed of directing that in case the petitioners have raised any crop over the land in question, they shall be permitted to harvest the same, after paying the maktha, and that it shall be open to the respondents to resume the land soon thereafter, without the necessity of initiating any further proceedings. There shall be no order as to costs.

27.01.2005

Note:

Issue CC in three days.

(BO)

ksld

To

1 The Deputy Commissioner of Endowments, Kakinada, East Godavari

District.

2 The Assistant Commissioner of Endowments, Eluru, West Godavari

District.

3 The Executive Officer, Sri Sheera Ramalingeshwara Swamy Temple, Palakol, West Godavari District.

4 Two CCs. to the G.P. for Endowments, High Court of A.P.,

Hyderabad (OUT).

5 Two CD copies.